INDEX OF SUBJECT MATTER

	Pages
Alabama cases distinguished	8, et seq
Appellants' knowledge of adverse claim	12
Appellee's contentions stated	3, 4
Bill, contents	1, 2
Confirmation of Davis Claim	2, 3, 4
Laches, excuse for	14, 15, 16, 18
Laches of appellants before issuance of patent	3
Laches after issuance of patent	17
Legal Title acquired by Davis	3 to 8
Origin of appellants' claim	1, 2
Origin of appellee's title	1, 2, 3
Patent, issuance and delivery	2
Patent contested	17
Statement	1, 2, 3
Survey, date of	2
Survey, effect of	3 to 8

INDEX OF AUTHORITIES

Abraham v. Ordway, 158 U. S. 416	19
4 Am. State Papers, 161, 218, 263, 268, 275, 83, 157, 161	5
Badger v. Badger, 2 Wall. 87	16, 19
Brush v. Ware, 15 Peters 93	14
Cagle v. Dunham, 14 Okla. 610	18
Carpentier v. Montgomery, 13 Wall. 480	5
Dodge v. Littler, 73 Tex. 319	13
Estes v. Timmons, 199 U. S. 391	18
Joplin v. Chachere, 192 U. S. 94	7
Langdeau v. Hanes, 21 Wallace 521	4, 7
Lutjen v. Lutjen, 64 N. J. Eq. 773	15
McArthur v. Brue, 190 Ala. 563	10
Mackall v. Casilear, 137 U. S. 556	18
Nelson v. Weekley, 177 Ala. 130	10
Osborne v. Altschul, 101 Fed. 739	18
5 Pomeroy Eq. Jurisprudence, Secs. 21 to 23	15
Price v. Dennis, 159 Ala. 625	12
Ryan v. Carter, 3 Otto 78	7
Sanchez v. Deering, 288 Fed. Rep. 412, 298 Fed. Rep. 286	1
3 Statutes at Large 528	11
4 Statutes at Large 202	2, 3, 5
Stein v. England, 80 So. 362 (Ala. Dec. 19, 1918)	11
Wagner v. Baird, 7 Howard 234	16, 19
Webb on Record of Titles, Sec. 135	13
Wilson Cypress Co. vs. Marcos, 236 U. S. 635	7
Wilson v. Castro, 31 Calif. 420	13

IN THE SUPREME COURT
OF THE UNITED STATES

E. C. F. SANCHEZ, et al. :
Appellants, :
Vs. : No. 536
JAMES DEERING, :
Appellee. :

STATEMENT.

This case was decided by the District Court March 28, 1923.

288 Fed. Rep. 412, Sanchez v. Deering.

The opinion of the Circuit Court of Appeals was rendered March 18, 1924.

298 Fed. Rep. 286, Sanchez v. Deering.

Appellants were complainants below and will be referred to as Complainants. Appellee was defendant below and will be referred to as Defendant.

Complainants, by their bill, attacked defendant's title to certain land on Key Biscayne, in Dade County, Florida, seeking to have a trust declared as to an undivided one-half interest.

Defendant attacked the sufficiency of the bill by a motion to dismiss, which motion was sustained by the District Court; and the case was affirmed by the Circuit Court of Appeals.

The bill alleges that the claim originated in a Spanish grant in 1805 to one Fornells, that a half-interest in said claim was ultimately acquired through inheritance by a daughter of Fornells, Antonia Porsila (or Porala) who conveyed to Venancio Sanchez, through whom the appellants,

descendants of Venancio Sanchez, acquired their alleged equitable title.

Complainants' case rests largely on allegations of fraud on the part of Mary Ann Davis, through whom the defendant claims title.

Defendant's contention is based on the following title history set out in the bill:

In 1824 Mary Ann Davis presented to the United States Commissioners, theretofore appointed, her claim for confirmation to her of the title to the entire grant, accompanying her application with certain evidence of the acquisition by her of the claim of Fornells.

Record 5, 6.

The claim was by the Commissioners confirmed to Mary Ann Davis.

Record 5, 6.

Thereafter the action of the Commissioners was confirmed by act of Congress of February 8, 1827.

Record 10.

4 Statutes at Large 202.

In 1847 the land in question was surveyed and thereby segregated.

Record 8.

In 1896 the Commissioner of the General Land Office issued to Mary Ann Davis, then deceased, a patent, but because of a protest filed by appellants' ancestor the patent was withheld, pending consideration of said protest and an appeal by the protestant to the Secretary of the Interior, until 1898, when it was delivered to one of the heirs of Mary Ann Davis.

Record 10 to 15.

In 1913 the land was deeded to Waters S. Davis, who was one of the heirs of Mary Ann Davis and had acquired the interest of all the other heirs, to the defendant, James Deering.

Record 18-19.

The defendant took possession by a keeper having "a habitation somewhere on the island."

Bill 12, Record 19.

In 1920 defendant's title was attacked by this suit.

BRIEF

In his motion to dismiss the defendant relied upon the contention that the bill clearly showed laches on the part of the complainants, and by the decisions of the District Court and the Circuit Court of Appeals that contention has been sustained.

We submit that the decree of the District Court as affirmed by the Circuit Court of Appeals is correct, and urge not only the reason assigned by the District Court, namely, that the complainants had been guilty of laches after the issuance of the patent in 1896, but also the additional reason assigned by the Circuit Court of Appeals, namely, that the complainants were barred by laches before the patent was issued.

Proceeding chronologically, we shall present these two grounds of contention in inverse order.

First.

COMPLAINANTS WERE BARRED BY LACHES BEFORE THE PATENT WAS ISSUED IN 1896.

The defendant claims through Mary Ann Davis who held under a Spanish grant. The claim of Mary Ann Davis was confirmed to her by Act of Congress February 8, 1827.

Record 10.

4 Statutes at Large 202.

At the time of confirmation, the land had not been surveyed but it was surveyed and segregated in 1847.

Record 8.

The confirmation and survey, taken together, vested the legal title in Mary Ann Davis.

"If the claim be to the land with defined

> boundaries, or capable of identification, the legislative confirmation perfects the title to the particular tract, and a subsequent patent is only documentary evidence of that tile. If the claim be to quantity, and not to a specific tract capable of identification, a segregation by survey will be required, **and the confirmation will then immediately attach the title to the land segregated."**
>
> 21 Wallace 521
>
> 22 Law Ed. 606 (609)
>
> Langdeau vs. Hanes

Therefore, the legal title was in Mary Ann Davis from and after 1847. But even prior to 1847, in 1827, the claim of Mary Ann Davis had been confirmed.

The other claimants were in position to assert their rights in Court and it was their duty to do so. This necessity was pointed out in the Act of 1827 by the provision that the confirmation should not be construed "to prevent or bar the judicial decision between persons claiming title to lands confirmed."

We propose to show that:

1. The defendant and those under whom he claims had had the legal title, when this suit was brought, for more than seventy-two years.

2. The complainants and their predecessors in title have been chargeable since 1827 with knowledge of the claims of defendant and his predecessors in title.

3. The complainants and their predecessors have therefore been guilty of laches.

1.

THE DEFENDANT AND THOSE UNDER WHOM HE CLAIMS HAD HAD THE LEGAL TITLE, WHEN THIS SUIT WAS BROUGHT, FOR MORE THAN SEVENTY-TWO YEARS.

The grant was confirmed by Commissioners to Mary Ann Davis in 1824. This fact is not disputed by appellant, although it does not clearly appear in the record because of the fact that the exhibits to the bill, which are a part of it, are not printed. The fact is established, however, by:

Record 6, 10.

4 Am. State Papers, 161, 218, 263, 268, 275.

The Commissioners reported their action to the Secretary of the Treasury January 1, 1825, and the report was by the Secretary referred to Congress, **February 21, 1825.**

4 Am. State Papers, 83, 157, 161.

The act of Congress of February 8, 1827, confirmed all claims "contained in the reports, abstracts and opinions of said Commissioners which have been transmitted to the Secretary of the Treasury according to law and referred by him to Congress the **21st of February, 1825,** and the 21st of February, 1826."

Bill, p. 6, Record 10.

4 Statutes at Large, 202.

These confirmations taken with the survey in 1827 invested the confirmee with the legal title.

> "A confirmation of a Spanish or Mexican grant of land in California segregates the land from the public domain and invests the confirmee with legal title."
>
> 13 Wall. 480; 20 Law. Ed. 698 (Headnote 3), Carpentier v. Montgomery.
>
> "The commissioners decided in favor of the heirs and confirmed their claim, and transmitted a transcript of their decision to the Secretary of the Treasury, by whom it was laid before Congress.
>
> "By the Act of March 3rd, 1807, * * * * * 2 Stat. at L., 446, this decision, and all other de-

cisions in favor of persons claiming lands in the District of Vincennes, contained in the transcript transmitted to the Secretary of the Treasury, were confirmed. This confirmation was the fulfilment of the condition stipulated in the deed of cession so far as the claimants were concerned. It was an authoritative recognition by record of the ancient possession and title of their ancestor, and gave to them such assurance of the validity of that possession and title as would be always respected by the courts of the country. The subsequent clause of the Act providing for the issue of a patent to the claimants, when their claim was located and surveyed, took nothing from the force of the confirmation.

"In the legislation of Congress a patent has a double operation. It is a conveyance by the Government when the Government has any interest to convey; but where it is issued upon the confirmation of a claim of a previously existing title it is documentary evidence, having the dignity of a record, of the existence of that title, or of such equities respecting the claim as justify its recognition and confirmation. The instrument is not the less efficacious as evidence of previously existing rights because it also embodies words of release or transfer from the government.

"In the present case the patent would have been of great value to the claimants * * * *. But it would have added nothing to the force of the confirmation. The survey required for the patent was only to secure certainty of description in the instrument, and to inform the govern-

ment of the quantity reserved to private parties from the domain ceded by Virginia.

"* * * * A legislative confirmation of a claim to land is a recognition of the validity of such claim, and operates as effectually as a grant or quit-claim from the government."

21 Wall. 521; 22 Law. Ed. 606 (p. 608 and 609).

Langdeau v. Hanes.

"The confirmation by commissioners appointed under the act of Congress of March 3, 1807, (2 Stat. at L. 440, chap. 36), of a claim to 913.98 acres of land in the territory of Orleans, based on occupancy and settlement, followed by the confirmation by Congress in the Act of April 29, 1816, (3 Stat. at L. 329, chap. 159), of the claim so confirmed, and by a survey, passed title so as to permit prescription, founded on uninterrupted possession, to begin to run before the patent issued."

192 U. S. 94; 48 Law. Ed. 359 (Headnote).

Joplin v. Chachere.

"The confirmation operated as a grant, to all intents and purposes, and that a grant may be made by a law as well as a patent pursuant to a law, has been settled by the repeated decisions of this Court."

3 Otto, 78; 23 Law. Ed. 807 (p. 808),

Ryan v. Carter.

This point was fully discussed and settled in accordance with our contention in

236 U. S. 635, Wilson Cypress Co. v. Marcos.

In the foregoing cases the confirmation was by commissioners in one, by direct act of Congress in one and in the

other two by the Commissioners and also by direct act of Congress.

In at least two of the foregoing cases the statute under which confirmation was made by Commissioners is shown to have contained a proviso protecting claims of third parties, as in the instant case.

The doctrine of the foregoing cases is fully applicable in the instant case.

We concede that confirmation does not preclude third parties from asserting their rights; but we contend that the confirmation vests the legal title in the confirmee and that thenceforward a third party must exercise diligence in asserting his claim.

We submit that our contention is fully sustained by the foregoing cases.

The complainants rely on certain Alabama cases but those cases are not applicable here as we think will appear from what follows.

Counsel cited below the case of Nelson v. Weekley, 177 Ala. 130, 59 So. 157, in which it was held "that the United States held the legal title to the land until the issuance of the patent."

But the distinguishing feature of that case is that **there never had been a confirmation**, as clearly appears from the following language taken from the opinion of the Court in that case.

> "A certain class of named claimants or donees are entitled to have a formal confirmation of their title. * * * * It is plain that John Weekley does not come within this class. The part of section 6 referred to reads as follows: 'When it shall appear to them (commissioners) that the claimant is entitled to a tract of land under the articles of agreement and cession with

Georgia aforesaid, in virtue of a British or Spanish grant, legally and fully executed, they shall give a certificate thereof describing the tract of land and the grant, and stating that the claimant is confirmed in his title thereto by virtue of the said articles; * * * *.'

"John Weekley does not come within the class described in the above quotation, but does come within the class described in that portion of said section 6 immediately following, and which reads as follows: 'When it shall appear to the said commissioners that the claimant is entitled to a tract of land by virtue of a settlement under the Bourbon act of Georgia, recognized in the said articles of agreement and cession, or of either of the two first sections of this act, they shall give a certificate thereto, stating the circumstances of the case and that the claimant is entitled to receive a patent for such tract of land by virtue of this act.'

* * * * * * * *

"As to the two clauses in section 6 of the act of March 3, 1803, above quoted, the first clause quoted declares that the certain class of claimants or donors therein named, upon performance of required conditions and being in the category named, shall be given a certificate describing the lands and the grant and stating that the claimant is confirmed in his title, and which being recorded by the register of the Land Office, shall amount to a relinquishment forever on the part of the United States to any claim whatever to such tract of land. It was the evident intention of Congress to have the title pass when all

conditions and requirements had been performed and certificate issued and recorded under this clause.

"Now it is equally clear, from the very distinction and difference made by the terms in the next clause of section 6 above quoted, from the first clause that it was not the intention of Congress for the title to pass automatically as to the class named in section 2, when the commissioners reported that the 'claim is supported agreeably to the requirements of the law', and 'that the claimant is entitled to the patent'."

177 Ala. 130,

59 So. 157 (pp. 158 and 159),

Nelson v. Weekley.

Counsel cited McArthur v. Brue 190 Ala. 563, 67 So. 249, where it was held that the legal title did not pass until a patent issued; but here again there had never been a confirmation. The Court in construing the act of Congress said:

"It appears that there was not even an attempt to grant any land by the act of Congress in question, but only to provide for a survey, or location, or identification, of certain claims, and, when so located and identified, for a grant by the issuance of a patent, which was accordingly done in this case."

190 Ala. 563

67 So. 249 (p. 250),

McArthur v. Brue.

The statute involved in McArthur v. Brue (3 Statutes at Large, 528), provided in section 3 for confirmation in certain cases by commissioners; and in section 12 for the issuance, in another class of cases, of a certificate to the claimant by the register and receiver when in his opinion the claimant is

entitled thereto, under such instructions as may be received from the Commissioner of the General Land Office; and section 12 concludes as follows:

> " 'And where it shall appear to the satisfaction of the Commissioner of the General Land Office that the certificate has been fairly obtained according to the true intent and meaning of this act, then and in that case a patent shall be granted in like manner as for other lands of the United States'."
>
> 3 Stat. at Large 528.

It seems manifest that the claimant in McArthur v. Brue came within the class covered by section 12 of the statute quoted; and consequently there could not have been a confirmation, because it is well recognized that the power of confirmation has never been conferred on the register and receiver.

The case of McArthur v. Brue is further clarified by another Alabama case, construing the same statute, in which the Court clearly recognizes the distinction between a confirmation and a mere certificate or report.

> 80 So. 362 (Ala. Dec. 19, 1918)
> Stein vs. England.

In McArthur v. Brue, the decision is partly on the authority of Price v. Dennis in which it was held that in that case "It was intended by Congress that the patent should pass the legal title, and that it should not pass until the patent was issued"; but the Court recognized the distinction for which we contend in the following language:

> "The legal title can pass out of the United States as well by such a grant of Congress as by a patent, and if a patent is issued thereafter it may be that it is merely evidentiary of the prior grant and selection."

159 Ala. 625
49 So. 248 (p. 250),
Price v. Dennis.

Counsel cited in the Court below the case of United States v. Juan Perchman (7 Peters 51; 8 Law. Ed. 604); but it is not apposite because in that case there was no patent, and no confirmation. There had been a rejection by the Commissioners and the question in the case was whether by that rejection the claimant was finally deprived of his right and interest in the land involved in the suit.

We therefore submit that:

The defendant and those under whom he claims had had the legal title, when this suit was brought, for more than seventy-two years.

2.

THE COMPLAINTANTS AND THEIR PREDECESSORS IN TITLE HAVE BEEN CHARGEABLE SINCE 1827 WITH KNOWLEDGE OF THE CLAIMS OF DEFENDANT AND HIS PREDECESSORS IN TITLE

The bill shows that the complaintants claim under a deed from Antonia Porsila to Venancio Sanchez, that such deed was executed May 6, 1843, that Venancio Sanchez lived until 1899, and that the complaintants claim under Venancio Sanchez as heirs and grantees.

Bill 4, Record 7, 16.

When Venancio Sanchez took the deed from Antonia Porsila in 1843, Mary Ann Davis had stood as confirmee of the land since 1827, when her claim was confirmed by act of Congress, if not since 1824, when it was confirmed by the Commissioners,—a period of sixteen or possibly nineteen years.

Therefore, Venancio Sanchez bought a stale claim.

It can be reasonably inferred from the bill that Venancio Sanchez knew the history of his alleged title, which rested

on the original Fornells grant; but actual knowledge is not necessary. He was presumed to know the law which required that his claim should have been presented and confirmed; and he was chargeable with knowledge of all that had occurred to affect his title. He could not make out his title except by reference to the history of the Fornells grant, which was to be found in the records of the General Land Office.

73 Tex. 319,
11 S. W. 331,
Dodge v. Littler.
Webb on Record of Titles, Sec. 135.

This point is well covered by the case of Wilson v. Castro. There the Court said:

> "If the widow of Buelna had no property interest in the land which she and her husband, Rodriguez undertook to convey to Castro, then Castro could not, by means of the deed to him, acquire any right or interest therein. It was not necessary that he should have had actual notice of the rights and interests of the particular heirs at law mentioned in order to render invalid the conveyance made to him."
>
> * * * * * * * * *
>
> "and it is not to be supposed that Mrs. Rodriguez was not aware of the source of her former husband's title * * * * nor can it be presumed that when Castro obtained his deed from her and her husband, Rodriguez, he was not aware of the grant made to Antonio Buelna."

31 Calif. 420,
Wilson v. Castro.

> "No principle is better established than that a purchaser must look to every part of the title which is essential to its validity."

15 Peters 93 (111),
10 Law Ed. 672 (679),

Brush v. Ware.

Therefore we submit that:

The complaintants and their predecessors in title have been chargeable since 1827, with knowledge of the claims of defendant and his predecessors in title.

3.

THE COMPLAINTANTS AND THEIR PREDECESSORS HAVE THEREFORE BEEN GUILTY OF LACHFS

From 1843 to 1899 Venancio Sanchez was advised of his rights, if he had any. The legal title was after 1847, in the confirmee, Mary Ann Davis and her heirs, and Sanchez was not in actual possession of the land. Therefore the burden was on him; but during all that time he instituted no legal proceedings to establish his claim or to attack the Davis legal title.

The bill alleges, by way of excuse, that the complainants were advised of the relationship between Rafael Andreu and Antonia Porsila, which made them joint heirs of their Mother, the widow of Peter Fornells; but that they were unable, until 1920, to produce evidence of such relationship.

It is plainly apparent that the progress of time which was taking the complainants towards the discovery of the evidence they wanted, was likewise taking the defendant and the Davis interests away from the possibility of discovering evidence in rebuttal. The claim was barred by laches before the loss of the evidence which complainants have now discovered.

If Venancio Sanchez had acted with the promptness which taking the complainants towards the discovery of the evidence he could doubtless, in 1843, have produced Antonia Porsila herself as a witness to the facts which complainants now rely on. He had every reason to act at that time. He had bought a stale claim and was asserting the invalidity of

Mary Ann Davis' legal title. It was incumbent upon him to act promptly. His failure to do so as long as he lived, until 1899, is clearly imputable to him as fatal laches and complainants cannot be in better position than he was in.

5 Pomeroy Equity Jurisprudence,
Secs. 21 to 23. (Edition of 1905)

In a New Jersey case where the delay was "for the long period of nine years and almost eight months", the Court said:

> "Lapse of time alone is deemed by the authorities to be a sufficient ground of estoppel in cases like the present, when the court cannot feel confident of its ability to ascertain the truth now, as well as it could when the subject for investigation was recent, and before the memories of those who had knowledge of the material facts have become faded and weakened by time. To constitute estoppel of this description, it is not essential that any actual loss of testimony, through death or otherwise, or means of proof, or changed relations, to the prejudice of the other party, should have occurred. But the estoppel arises because the court cannot, after so great a lapse of time, rely upon the memory of witnesses to reproduce the details that entered into the final execution of the instrument of settlement."
>
> 64 N. J. Eq. 773
> 53 Atl. 625 (628),
>
> Lutjen v. Lutjen.

The reason and wisdom of this rule is well illustrated in the instant case. In the affidavit of Vernancio Sanchez, set out in the bill of complaint, appears this statement:

> "* * That said transaction occurred many

> years ago and affiant does not now recollect all the details of the relationship of his grantors to Peter Fornells or Bonelli to whom the said lands were granted, but affiant recollects that one of his grantors declared to him that she was the sister of Rafael Andreu" * * * *.

Record 13

In considering an excuse for laches, the Courts will look not only to the complaintant's lack of knowledge, but also to the effect of the long delay on the rights of defendant.

> "In order to excuse such acquiescence or laches, fraud or concealment must be shown, and the facts must be particularly set out in the bill".

2 Wall. 87; 17 Law. Ed. 836 (Headnote)
Badger vs. Badger.

The complainants attempt to excuse their laches on the ground that they could not find the **evidence** to establish their rights; but there is not an allegation in the bill which in any way connects the defendant and his predecessors in title (The Davises) with any concealment of this evidence or any responsibility for its loss.

> "Long acquiescence and laches by parties out of possession are productive of much hardship, and injustice to others, and cannot be excused but by showing some actual hindrance or impediment caused by the fraud or concealment of the party in possession, which will appeal to the conscience of the Chancellor."

7 Howard 234; 12 Law. Ed. 681
Wagner v. Baird.

We submit that:

The complainants and their predecessors have therefore been guilty of laches.

SECOND

THE COMPLAINANTS ARE CHARGEABLE WITH LACHES IN HAVING NEGLECTED UNTIL 1920 TO ASSERT THEIR RIGHTS IN COURT, AFTER THE ISSUANCE OF THE PATENT IN 1896, AND ITS DELIVERY IN 1898 (R. 10, 12).

In the interval between the issuance and delivery of the patent, the Sanchez interests protested the issuance of a patent by the Commissioner and appealed from the Commissioner's award of patent to the Secretary of the Interior and had opportunity to be fully heard.

R. 10 et seq.

The issuance and delivery of a patent after protest and contest by the Sanchez claimants was certainly a fair warning to those claimants that a legal proceeding was necessary to preserve their rights if they had any.

And when the warning brought forth no action by the claimants there was a reasonable inference that claimant's contest had ended.

The statutes did not prescribe a time within which the issuance of the patent must be attacked in court, but by analogy it might be said that a sufficient time would have been that allowed for a writ of error or an appeal from a judicial decree or judgment having a similar effect.

Certainly, after the patent had stood without attack for fifteen years, when the defendant contemplated a purchase, the history of the issuance of the patent, the contest over it, and its final delivery followed by fifteen years of inaction would have impressed an investigator not with the conviction that there was an outstanding claim of ownership, but rather with the certainty that the contest was abandoned.

Complainants now say by way of excuse that they would have brought the suit sooner if it could have been maintained, and by exactly the same process of reasoning, any investi-

gator would have been led to the conclusion that there was no claim to be asserted.

The issue and delivery of the patent under such circumstances will not be over-ruled by the Courts.

14 Okla. 610,
78 Pac. 561,
Cagle v. Dunham.
199 U. S. 391; 50 Law. Ed. 241,
Estes v. Timmons.

In a case where an **actual settler** had occupied land for 29 years and still occupied it when he started suit, it was held, as stated in the headnote, as follows:

> "A settler on public lands, intending to enter the same under the preemption laws, who does not appeal from the decision of the local land office rejecting his application, and who delays 17 years after the land has been patented to another before bringing suit therefor, is barred by laches from the right to equitable relief."

101 Fed. 739,
Osborne v. Altschul.

The alleged excuses for delay cannot inure to the benefit of complainants without gross injustice to the defendant.

The defendant is shown by the bill to have acquired the Davis title in 1913, fifteen years after the patent was delivered; and it does not appear that the records show any action on the part of the Sanchez interests between 1896 and 1920, or that the defendant had personal knowledge of any claim asserted by complainants, or their predecessors.

Mere assertion of a claim with no attempt at enforcement will not avoid the imputation of laches.

137 U. S. 556; 34 Law. Ed. 776 (780),
Mackall v. Casilear.

The defendant acquired the legal title which had first

vested in the confirmee, Mary Ann Davis, and was later recognized and ratified by the issuance of the patent.

His chain of title was complete, and was in no way dependent on the Sanchez claim. Therefore, he is not affected by the doctrine of Wilson v. Castro, supra.

But even if he is chargeable with notice of the Sanchez claim, what would the records have revealed to him?

Merely that Venancio Sanchez bought a stale claim in 1843 and suffered it to be barred by his laches in taking no action until 1896; that he then contested the claim before the land department and was defeated; that his defeat had been apparently acquiesced in by his taking no action since 1896.

The defendant was therefore misled by the conduct of Venancio Sanchez and the complainants.

Where delay has been seriously prejudicial to the adverse party who has not been guilty of fraud or concealment the laches will not be excused.

2 Wall. 87; 17 Law. Ed. 836 (Headnote)
Badger v. Badger;
7 Howard 234; 12 Law. Ed. 681 (Headnote)
Wagner v. Baird;
158 U. S. 416; 39 Law. Ed. 1036
Abraham v. Ordway.

The excuse for complainants' laches during this period is the same as that offered for the earlier laches, namely, that they were unable to find the evidence to establish their rights.

Our answer on this point has already been set out.

SUMMARY

Our contention is that the complainants are barred:

1. By the laches of Antonia Porsila from 1827 to 1843;
2. By the laches of Venancio Sanchez from 1843 to 1896;
3. By the laches of complainants from 1896 to 1920.

We contend that the excuses for laches presented by the

bill cannot avail the complainants, because their inability to discover evidence is not shown to be in anyway chargeable to the defendant or his prodecessors, and because the allowance of such an excuse would work injustice to the defendant, who has been by the lapse of time deprived of the possibility of producing evidence.

The legal title has been in defendant and his predecessors since 1847, and a legal title once vested cannot be divested bv mere assertion, but only by the aid of the Courts; and such aid was not sought until 1920.

We submit that the bill was rightly dismissed.

FREDERICK M. HUDSON,

Attorney for Appellee.